

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN ASSEMBLY MAY 20, 2010

AMENDED IN ASSEMBLY MAY 4, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2327

**Introduced by Assembly Member Harkey
(Coauthor: Assembly Member Torres)**

February 19, 2010

An act to add Division 4 (commencing with Section 13900) to the Insurance Code, relating to risk pools.

LEGISLATIVE COUNSEL'S DIGEST

AB 2327, as amended, Harkey. Affordable housing: risk retention pool.

Existing law authorizes local agencies to enter into a joint pooling agreement to form a single statewide insurance pooling arrangement for the payment of tort liability or public liability losses incurred by those agencies.

This bill would authorize an affordable housing entity, defined to include affordable housing entities that are created under the laws of another jurisdiction or organized under the laws of another state, to join with one or more affordable housing entities in an arrangement providing for the pooling of self-insured claims or losses, as specified. The pool would be authorized to be organized as a nonprofit corporation, limited

liability company, partnership, or trust, whether organized under the laws of this state or another state or operating in another state. The pool would be required to furnish a copy of the pool's audited financial statement *and most recent actuarial review* to specified legislative committees within 180 days of the close of the pool's fiscal year, *and if specified events have occurred since the last statement and review was submitted, the pool would be required to so indicate and provide a brief description of each occurrence.* The bill would prohibit the pooling arrangement from being considered insurance or being subject to regulation under the Insurance Code, and would require written notice to be given as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 4 (commencing with Section 13900) is
2 added to the Insurance Code, to read:

3

4 DIVISION 4. AFFORDABLE HOUSING ENTITIES RISK
5 RETENTION POOL

6

7 13900. An affordable housing entity may join with one or more
8 other affordable housing entities in an arrangement providing for
9 the pooling of self-insured claims or losses with respect to any of
10 the following:

11 (a) Insurance covering all or any part of any tort liability.

12 (b) Insurance covering any employee of the affordable housing
13 entity against all or any part of his or her liability for injury
14 resulting from an act or omission in the scope of employment.

15 (c) Insurance covering any board member, officer, partner,
16 manager, member, or volunteer of the affordable housing entity
17 against any liability that may arise from any act or omission in the
18 scope of participation with the affordable housing entity.

19 (d) Insurance covering any loss arising from physical damage
20 to motor vehicles, personal property, real property, or other
21 property owned or operated by the affordable housing entity.

22 13901. (a) The pooling arrangement established pursuant to
23 this division shall not be considered insurance, and shall not be
24 subject to regulation under this code.

(b) All affordable housing entities participating in a pooling arrangement established pursuant to this division shall be given written notice, in at least 10-point type, that the pool is not regulated by the Insurance Commissioner and that the state insurance insolvency guaranty funds are not available to safeguard its risk.

13902. (a) Any insurance pool, established pursuant to this division, may be organized as a nonprofit corporation, limited liability company, partnership, or trust, whether organized under the laws of this state or another state or operating in another state.

(b) Any insurance pool established pursuant to this division shall have initial pooled resources of not less than two million five hundred thousand dollars (\$2,500,000) in the form of cash or cash equivalents.

(c) Any insurance pool established pursuant to this division shall maintain adequate reinsurance to protect against its risks.

(d) Any insurance pool established pursuant to this division shall furnish a copy of the pool's annual audited financial statement *and most recent actuarial review, by first class mail or by any other method of delivery, including electronic transmission*, to the Assembly Committee on Housing and Community Development, the Assembly Committee on Insurance, the Senate Committee on Banking, Finance, and Insurance, and the Senate Committee on Transportation and Housing within 180 days of the close of the pool's fiscal year. *If, in the period of time since the last submittal required by this subdivision, any of the following has occurred, the transmittal letter accompanying the annual audited financial statement and most recent actuarial review shall so indicate and shall provide a brief description of each matter:*

(1) *There has been a change to the pool's plan of financing, management, or operation, including any material amendment to any of those plans.*

(2) *A claims audit report has been filed with any regulatory body with respect to the pool.*

(3) *A report of examination issued by any regulatory body with respect to the pool has been received.*

(4) *There has been a material change in the scope of the regulation of the pool by other states in which the pool operates.*

13903. All participating affordable housing entities in any insurance pool, established pursuant to this division, are required

1 to agree to pay premiums or make other mandatory financial
2 contributions, as determined by the governing board, provided for
3 by the insurance pool arrangement, that are necessary to ensure a
4 financially sound risk pool.

5 13904. Any insurance pool, established pursuant to this
6 division, shall not insure against any liability that may be insured
7 against pursuant to Division 4 (commencing with Section 3200)
8 of the Labor Code.

9 13905. Nothing in this division shall be construed to authorize
10 an affordable housing entity to pay for, to insure, to contract for
11 payment of, or to provide for payment for, any part of a claim or
12 judgment against an employee of the affordable housing entity for
13 punitive or exemplary damages.

14 13906. For the purpose of this division, “affordable housing”
15 means housing developments in which some of the dwelling units
16 may be purchased or rented, with or without government assistance,
17 on a basis that is affordable to persons or families of low or
18 moderate income, as defined in Section 50093 of the Health and
19 Safety Code.

20 13907. For the purpose of this division, an “affordable housing
21 entity” means any of the following:

22 (a) A housing authority created under the laws of this state or
23 another jurisdiction and any agency or instrumentality of a housing
24 authority, including, but not limited to, a legal entity created to
25 conduct a self-insurance program for housing authorities that
26 complies with Chapter 5 (commencing with Section 6500) of
27 Division 7 of Title 1 of the Government Code.

28 (b) A nonprofit corporation organized under the laws of this
29 state or another state that is engaged in providing affordable
30 housing.

31 (c) A partnership, general or limited, or limited liability company
32 that is engaged in providing affordable housing and that is affiliated
33 with a housing authority described in subdivision (a) or a nonprofit
34 corporation described in subdivision (b) if the housing authority
35 or nonprofit corporation has one or more of the following:

36 (1) A financial or ownership interest in the partnership or limited
37 liability company or the right to acquire that interest.

38 (2) The power to direct the management or policies of the
39 partnership or limited liability company.

- 1 (3) A contract to lease, manage, or operate the affordable
- 2 housing owned by the partnership or limited liability company.

O